

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: AT&T MOBILITY WIRELESS DATA)	
SERVICES SALES TAX LITIGATION)	
)	MDL No: 2147
)	Case No. 1:10-cv-02278
)	
This Document Relates To:)	Judge Amy J. St. Eve
All Actions)	

Joint Motion of 57 Plaintiffs Represented By Interim Settlement Class Counsel and Defendant AT&T Mobility LLC for Order Designating Settlement Class; for Preliminary Approval of Settlement; for Approval of Notice; and for Appointment of Administrator

Pursuant to Federal Rule of Civil Procedure 23(e), 57 plaintiffs in these consolidated actions,¹ through Interim Settlement Class Counsel, and defendant AT&T Mobility LLC (“ATTM”) respectfully move this Court for an order holding that:

- (i) the nationwide settlement class and state-specific subclasses may be certified under Rules 23(a) and (b);

¹ The 57 plaintiffs who join in making this motion are Andy Armstrong, Ronald Bendian, Michael Bosarge, Eric Bosse, Vicki L. Campbell, Harvey Corn, Pam Corn, Matthew Cranford, Steven A. DeVore, Jane F. Edmonds, Heather Feenstra-Kretschmar, Adrienne M. Fox, Richard Garner, Stephen S. Girard, David Guerrero, Christopher R. Havron, Christopher Hendrix, Martin Hoke, Meri Iannetti, Christopher Jacobs, Kathy J. Johnson, Jamie Kilbreth, Bert Kimble, Vickie C. Leyja, Jonathan Macy, Rick Manrique, Heather Mazeitis, Bonnae Meshulam, Miracles Meyer, Audrey J. Mitchell, Adrienne D. Munson, Jill Murphy, Gira L. Osorio, Sara Parker Pauley, Joseph Phillips, Heather Rahn, David Rock, Lesley Rock, William J. Rogers, James Marc Ruggiero, Ann Marie Ruggiero, James Shirley, Randall Shuptrine, John W. Simon, Karl Simonsen, Donald Sipple, James K.S. Stewart, Dorothy Taylor, Kirk Tushaus, Matthew Vickery, John W. Wallace, Eleanor T. Wallace, Craig Wellhouser, Aaron White, William A. Wieland, Robert Wilhite, and Penny Annette Wood.

(ii) the proposed settlement is within the range of possible approval under Rule 23(e), thus warranting notice of the proposed settlement to the class and the scheduling of a fairness hearing;

(iii) the proposed notice to class members by email, text message, U.S. mail, and publication is appropriate as to its content and methods of delivery; and

(iv) Analysis Research Planning Corporation (“ARPC”) should be appointed as the Notice and Settlement Administrator.

This Motion is based upon this Motion, the attached Joint Memorandum in support and its exhibits, and the Declaration of Edward Robertson, Jr. In support of this motion, the 57 plaintiffs and ATTM state as follows:

1. Consolidated before the Court in this MDL action are 54 separate cases brought by a variety of plaintiffs—including the 57 plaintiffs that are parties to this motion—that were filed in, or were removed to, various federal district courts and were transferred to this Court for all pretrial purposes by the Judicial Panel on Multidistrict Litigation on April 7, 2010. *See* Order, Docket No. 1.

2. The plaintiffs in these actions allege, among other things, that ATTM collected state and local taxes on wireless data access services that are preempted by Internet Taxation Freedom Act (47 U.S.C. § 151 note (as amended)) or forbidden by state law, in violation of state consumer protection laws, the affected customers’ contracts, and other common law doctrines. ATTM disputes the plaintiffs’ factual and legal allegations and denies any liability.

3. On June 23, 2010, the Court appointed Bartimus, Frickleton, Robertson & Gorny, P.C. and The Huge Law Firm, PLLC as Interim Settlement Class Counsel. *See* Order, Docket No. 47.

4. The parties to this motion—57 plaintiffs, who are the representatives from most (though not all) of the 54 actions consolidated before the Court, and ATTM—have reached a proposed settlement agreement to resolve all of the actions pending before the Court. Because the agreement provides the putative class with virtually all of the relief sought by plaintiffs despite the considerable uncertainty that they would ultimately obtain class certification and prevail at an eventual trial on the merits, and in order to avoid the considerable time and expense of continued litigation, the proposed settlement is within the range of possible approval under Federal Rule of Civil Procedure 23(e).

5. The 57 plaintiffs and ATTM therefore request that the Court certify the proposed class and subclasses for settlement purposes and approve their plan to notify the class members of the proposed settlement by bill message, text message, email, U.S. mail, and publication—which is the best notice practicable under the circumstances—so that class members are given an opportunity to opt out of the class or to voice any objections to the settlement at a later fairness hearing. *See Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982); MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. Supp. 2010).

6. Because the number of class members is in the millions and ARPC has experience administering class notice and settlements in class actions with a very large number of class members, the parties respectfully request that the Court appoint ARPC as the Notice and Settlement Administrator.

WHEREFORE, the 57 plaintiffs and ATTM respectfully request that the Court certify the proposed class and subclasses for settlement purposes; preliminarily approve the settlement agreement; approve the notice plan and order the dissemination of notice as set out in the settlement agreement; and appoint ARPC as notice and settlement administrator. The 57

plaintiffs and ATTM further request that the Court enter a schedule for completion of the notice plan, the filing of any objections, the filing of plaintiffs' application for attorneys' fees and expenses and class representatives' compensation, the motion for final approval, and the final approval hearing. The parties will propose suggested dates at the July 8 hearing on this motion.

Dated: June 24, 2010

Respectfully submitted,

/s Edward D. Robertson, Jr.

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